APPENDIX A

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION SIX

[Filed Dec. 17, 2001]

JOSEPH L. COLE, as Trustee, etc.,
Plaintiff and Appellant,
v.
COUNTY OF SANTA BARBARA *et al.*,
Defendants and Respondents.

2d Civil No. B147339
(Super. Ct. No. 01003407)
(Santa Barbara County)

Joseph Cole, trustee for the Stanford Farms Trust, appeals from the judgment entered after the trial court granted a motion to dismiss and sustained a demurrer to the complaint he filed against respondents County of Santa Barbara and the Board of Supervisors. We affirm.

Procedural and Factual Background

In 1980, Francice Bushkin, the owner of a 25-acre parcel of real property in Santa Barbara, applied for a coastal development permit to add a sunroom and wooden deck to an existing guesthouse (a total of 570 square feet of improvements). At that time, the property was improved with a residence, stables, farmhands' quarters, barns, a guesthouse, and outbuildings. The improved part of the real property is separated from the beach by a 60-foot coastal bluff. On May 9, 1980, the California Coastal Commission approved

the permit, on the condition that Buskin record an offer, irrevocable for 21 years, to dedicate to the public a lateral access easement (77,000 square feet) running across the coastal side of the property. In May of 1982, Bushkin recorded the irrevocable offer to dedicate, the commission then issued the permit, and she constructed the sunroom and deck.

In 1987 and 1994, the United States Supreme Court issued decisions in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825, and *Dolan v. City of Tigard* (1994) 512 U.S. 374, discussing the question whether a taking of private property without compensation occurs when a governmental entity requires an easement for public access as a condition for issuance of a construction permit. In *Nollan*, the court held that a taking occurs unless there is a substantial connection, or a "nexus," between the condition imposed on the use of the land and the adverse impact of the proposed improvement. (*Nollan*, at p. 837.) In *Dolan*, the court elaborated on the degree of connection that is required between the exactions imposed by the governmental entity and the adverse effects of the proposed development. Essentially, the governmental entity seeking to impose a development condition has the burden of proving that the "nature and extent" of the condition is "roughly proportionate" to the "nature and extent" of any adverse impact from the development. (*Dolan*, at p. 391.)

In 1995, the Stanford Farms Trust acquired Bushkin's property as a successor in interest. On October 6, 1998, the Santa Barbara County Board of Supervisors held a public hearing at which it was expected to accept numerous outstanding offers to dedicate public access easements. The trust's representative appeared at the hearing and objected to the proposed acceptance of the irrevocable offer to dedicate on the trust's property. The trust's representative argued the board's acceptance of the offer to dedicate would violate the constitutional rights of the trust's beneficiary under *Nollan*

and that acceptance of the offer could result in significant environmental impacts. Initially, the board delayed action on the offer to dedicate.

On October 16, 1998, Gregory Parker (the former trustee of the Stanford Farms Trust) recorded a Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement with the Santa Barbara County Recorder's Office. The notice stated that the offer to dedicate was revoked and rescinded on the grounds that acceptance of the offer would constitute an unconstitutional taking of property in violation of the constitutional rights of the owner, in direct contravention of the Fifth and Fourteenth Amendments to the United States Constitution and the Supreme Court decisions in *Nollan* and *Dolan*. The trust's attorney sent a letter to the board that same day advising that the trust had revoked the offer to dedicate.

On March 15, 1999, the Coastal Commission issued a "cease and desist" order, directing the trustee to cancel the Notice of Revocation and to refrain from engaging in any future activity inconsistent with the previously issued permit. In April of 1999, Parker objected to the cease and desist order and filed a complaint against the commission, seeking declaratory relief, rescission of the irrevocable offer to dedicate, and a writ of mandamus. That action was filed in Los Angeles County Superior Court and was later transferred to San Francisco County Superior Court.

In January of 2000, the San Francisco County Superior Court sustained the Coastal Commission's demurrer to Parker's first two causes of action based on principles of res judicata and waiver. Parker then unsuccessfully sought extraordinary relief in the Court of Appeal to set aside the order sustaining the demurrer. In March of 2000, Joseph Cole was substituted in the place of Parker as the successor trustee of the Stanford Farms Trust. The status of the San Francisco action is not clear from the record.

On February 15, 2000, the County accepted the irrevocable offer to dedicate on the trust's property through a resolution adopted by the Board of Supervisors. The trustee (Cole) objected and then initiated this action in April of 2000 against the County, seeking relief for a variety of claims. His amended complaint asserts ten causes of action, including declaratory and injunctive relief, rescission, quiet title, and inverse condemnation. These causes of action are all based on the allegations that (1) the County had accepted the offer to dedicate without showing the dedication was sufficiently related both in nature and extent to the impact of the owner's development as required by *Nollan* and *Dolan*; (2) the offer to dedicate was either void when made or became unenforceable after *Nollan* and *Dolan*; (3) the County acted under color of state law in accepting the offer; and (4) the County had violated the trust beneficiary's rights to procedural and substantive due process and equal protection. The amended complaint also included a petition for a writ of mandamus based on allegations that the County, by accepting the irrevocable offer to dedicate, had unconstitutionally taken the trust's property for public use without just compensation and had failed to comply with California's Environmental Quality Act (CEQA).[1]

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[1] The first three causes of action of the complaint are brought under 42 U.S.C. section 1983 and allege violations of substantive and procedural due process, and equal protection. The fourth and fifth causes of action seek a declaration under section 1983 and California Code of Civil Procedure section 1060 that acceptance of the offer to dedicate violated the Fifth and Fourteenth Amendments of the federal Constitution. The sixth cause of action alleges the County breached the implied covenant of good faith and fair dealing by purporting to accept the offer in violation of constitutional standards. The seventh and eighth causes of action petition the trial court for an administrative writ of mandamus. The ninth cause of action seeks to quiet title, and the tenth cause of action asserts a claim for inverse condemnation.

In October of 2000, the County filed a demurrer and a motion to dismiss the amended complaint, contending that the doctrines of waiver and res judicata precluded the trust from contesting the Coastal Commission's condition of approval placed on the 1980 permit. The County argued the trust's predecessor in interest had waived the right to challenge the permit condition by (1) complying with the condition and accepting the benefits of the permit; and (2) failing to challenge the condition through a timely petition for writ of administrative mandamus. The County further argued the trust lacked standing to challenge the irrevocable offer to dedicate because its predecessor in interest had relinquished the property interest, i.e., the right to the easement, in 1982 when the offer to dedicate was recorded. Finally, the County argued the CEQA claim was subject to mandatory dismissal because the trust had failed to (1) request a hearing within 90 days; (2) serve the petition within the required time period; and (3) comply with the 180-day statute of limitations.

In opposition, the trustee argued the County could not exercise its discretion and accept the irrevocable offer to dedicate in a manner contrary to public policy and the applicable constitutional standards. He argued the causes of action in his complaint were not barred by res judicata, waiver principles or the statute of limitations because he was not challenging the Coastal Commission's initial requirement of an offer to dedicate, but rather the "County's manner of acceptance of the [offer to dedicate], in the year 2000." Further, the trustee argued he had standing to bring the action because he was the owner, in trust, of the property against which the County recorded its Resolution of Acceptance, and the proposed use of the easement was inconsistent with the terms of the offer, applicable constitutional standards, and public policy. Finally, the trustee suggested the trial court should refuse to enforce the offer to dedicate on public policy grounds because it could not be accepted consistent with constitutional standards.

In December of 2000, the trial court sustained the demurrer to the entire complaint without leave to amend and granted the motion to dismiss on the grounds that (1) the claims were barred by res judicata; (2) the trustee could not challenge the validity of the conditions of a permit because the predecessor in interest had accepted the benefits of the permit and complied with the challenged permit conditions; (3) the trustee lacked standing to challenge the offer to dedicate because the predecessor in interest recorded the irrevocable offer and conveyed the property interest at issue; and (4) the CEQA claim was barred by the statute of limitations and by noncompliance with Public Resources Code sections 21167.4, subdivision (a), and 21167.6, subdivision (a).

Discussion

In reviewing the legal sufficiency of the trustee's complaint, this court must assume the truth of all factual allegations and determine whether "the facts alleged show entitlement to relief under any possible legal theory." (*Shaolian v. Safeco Ins. Co.* (1999) 71 Cal.App.4th 268, 271.) We review an order sustaining a demurrer de novo, exercising "independent judgment about whether the complaint states a cause of action as a matter of law." (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Application of the Doctrines of Res Judicata and Waiver

The trustee primarily contends the trial court erred in concluding that his claims were barred by the doctrines of res judicata and waiver. He argues these doctrines are inapposite because he challenges the taking of the property interest by the County when it accepted the offer to dedicate, rather than the actions of the Coastal Commission in requiring the offer as a condition to issuance of the permit in 1980. In particular, the trustee argues that (1) an offer to dedicate does not convey title to an easement until such time as the public

agency agrees to accept the offer (see *City of Santa Clara v. Ivancovich* (1941) 47 Cal.App.2d 502, 508; *Grupe v. California Coastal Com.* (1985) 166 Cal.App.3d 148, 170); (2) he seeks compensation only for the value of the property interest taken as a result of the County's actions in accepting the offer to dedicate, a challenge brought within 60 days of the County's actions as required by Public Resources Code section 30802; and (3) the County has an independent duty to comply with the constitutional standards enunciated in *Nollan* and *Dolan* and accept the offer to dedicate only if it can do so consistent with its obligations under the Fifth and Fourteenth Amendments. We reject these contentions.

Under the California Coastal Act, an aggrieved property owner must file a petition for writ of administrative mandamus within 60 days to challenge the validity of an action taken by the Coastal Commission. (Pub. Resources Code, § 30801.) Here, the amended complaint alleges that the commission issued the coastal development permit requiring the irrevocable offer to dedicate in May of 1980. The trustee concedes that Bushkin, the original permittee and property owner at that time, never filed an action challenging the commission's 1980 permit decision. The commission's decision, therefore, became final in 1980. As the County observes, well established principles of collateral estoppel and res judicata preclude the trustee, as the predecessor in interest, from relitigating the validity of the commission's decision or seeking alternative forms of relief therefrom.

For example, in *California Coastal Com. v. Superior Court* (1989) 210 Cal.App.3d 1488 (hereafter *Ham*), the Coastal Commission required a coastal property owner to record an offer to dedicate an easement for public access across the strip of beach in front of his home, in return for approval of a coastal development permit. In 1985, the landowner recorded the offer to dedicate, the commission issued the permit, and the landowner completed the project. Three years later,

following the decision in *Nollan*, the landowner sued the commission for inverse condemnation seeking $1 million in damages. He alleged the permit condition requiring dedication of a public beach access easement amounted to an unconstitutional taking of private property without compensation. The Court of Appeal issued a writ directing the trial court to sustain the commission's demurrer to the complaint, concluding that the landowner's failure to challenge the permit condition in an administrative mandamus action barred his action for damages. The court reasoned: "The primary right at issue in the administrative proceeding was Ham's right not to have his private property taken by the government for public purposes without compensation. That is the same primary right he asserts in his inverse condemnation action, although he now seeks a different type of relief." (*Id.* at p. 1499.) The court added that the validity of the permit condition was at issue in the prior administrative proceeding. "Because Ham failed to contest the validity by the means provided for judicial review, he is now estopped to relitigate the same issue in the context of an inverse condemnation action." (*Id.* at p. 1500, fn. 8.)

The *Ham* court further held that as long as an agency has subject matter jurisdiction over the issue before it, its decisions are subject to res judicata even if they turn out to be incorrect. "'It is an established rule that where a tribunal has jurisdiction of the parties and of the subject-matter it necessarily has the authority and discretion to decide the questions submitted to it even though its determination is erroneous. . . . This rule applies to quasi-judicial tribunals as well as to courts.'. . . Here, the commission quite clearly had subject matter jurisdiction and the authority to impose permit conditions reasonably related to any burdens on the public beach created by the construction of Ham's residence. . . . The fact that it incorrectly analyzed the relationship between the burdens and the condition it sought to impose—or perhaps more accurately, incorrectly anticipated the action of

the United States Supreme Court—does not mean it acted in excess of its jurisdiction in the fundamental sense. If he believed the commission was wrong, Ham had a remedy by way of judicial review. Having failed to avail himself of that recourse, he now has no basis for complaint." (*Ham, supra*, 210 Cal.App.3d at p. 1501, citations & fn. omitted.)

Similarly, in *Rossco Holdings, Inc. v. State of California* (1989) 212 Cal.App.3d 642, a landowner challenged various conditions that the Coastal Commission imposed on a coastal development permit issued in 1985, including the dedication of 200 acres of open space. Like the instant case, the landowner failed to timely petition to invalidate the conditions, accepted and complied with them, and recorded the offer to dedicate. Following *Nollan*, the landowner sued the commission, alleging claims for inverse condemnation, due process and civil rights violations, declaratory relief, and injunctive relief. The Court of Appeal held the doctrines of waiver and res judicata barred the landowner's claims and rendered them subject to a demurrer. "A landowner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit." (*Id.* at p. 654). The court added: "Regardless of whether [the landowner] pleads its cause of action as one for inverse condemnation or as a denial of due process, the essential underpinning of its recovery is the invalidity of the administrative action. That action must be reviewed by petition for writ of administrative mandate. Failure to do so renders the administrative action immune from collateral attack." (*Id.* at p. 660.)

Similarly, in *Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, the Coastal Commission issued permits to two landowners for development in the Malibu area within the coastal zone. As a condition of the permit, the commission required the landowners to record

development restrictions on other building sites in the coastal zone, including a dedication of a scenic easement. The permittees complied and recorded the restrictions on development on the other lots. A subsequent owner of the restricted lots then filed an administrative mandamus petition and a complaint for damages against the commission. The action attacked the declarations of restrictions on various constitutional and statutory grounds. The trial court sustained the commission's demurrer to the complaint and writ petition on the ground that the action was barred by the statute of limitations and the doctrine of waiver. The Court of Appeal affirmed: "It is well settled that a landowner who claims that a permit condition imposed by the Commission constitutes a taking must first establish the invalidity of the condition by way of a timely petition for a writ of administrative mandamus. Failure to file such a timely petition results in waiver of any inverse condemnation and related claims." (*Id.* at p. 524.) The appellate court also noted that Public Resources Code section 30801 required that challenges to the development permits be made within 60 days of issuance of the permit, the landowners were aware of the restrictions when they purchased the property, and the declarations of restrictions ran with the land and bound them "even though they were not parties to the deed restrictions." (*Id.* at p. 526.)

Finally, in *Patrick Media Group, Inc., v. California Coastal Com.* (1992) 9 Cal.App.4th 592, an owner of billboards brought an inverse condemnation action against the Coastal Commission based on a coastal development permit which required removal of three billboards before construction of a proposed hotel could begin on the property. The Court of Appeal held the owner's failure to challenge the discretionary administrative action in an administrative mandamus proceeding rendered the administrative action immune from collateral attack, either by inverse condemnation action or by any other action. The court reasoned that this general rule applied whether the challenge was that the

administrative decision was invalid and should be canceled, or that the decision resulted in a taking of property for public use without compensation. "In either case, the essential underpinning of the challenge is the invalidity of the administrative action." (*Id.* at p. 608.) The court elaborated upon the policy considerations underlying application of this general rule: "An agency's interest in prompt notice of a challenge to its decisions is, after all, equally great, whether the party raising that challenge is a landowner, a permit applicant, or any other party. . . . Once aware of a challenge from whatever source, an agency can cancel, change, or stay enforcement of a challenged action, or otherwise mitigate damages. On the other hand, if persons affected by adverse administrative actions—be they landowners, permit applicants, or others—were permitted to refrain from challenging such actions until mitigation of damages by the government becomes impossible through the passage of time or events, and then present monetary claims, the financial burden on government could become overwhelming." (*Id.* at pp. 612-613, citation omitted.)

Like the appellate courts in *Ham, Rossco, Ojavan*, and *Patrick Media*, we conclude the irrevocable offer to dedicate in this case is immune from collateral attack and that the causes of action set forth in the trustee's amended complaint are barred by the doctrines of res judicata and waiver. Bushkin, the trustee's predecessor in interest, chose not to challenge the Coastal Commission's permit condition in an administrative mandamus proceeding. The 1980 permit decision has, thus, become final and cannot be collaterally attacked through any of the claims alleged in the trustee's amended complaint. Moreover, the trustee's predecessor in interest complied with the permit condition, improved the property, and accepted the benefits of the permit. The permit "runs with the land" and the trust beneficiary has succeeded to the benefits enjoyed under the permit issued Bushkin. The trustee cannot now challenge the condition placed on issuance

of that permit. (*County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-511 ["a landowner or his successor in title is barred from challenging a condition imposed upon the granting of a special permit if he has acquiesced therein by either specifically agreeing to the condition or failing to challenge its validity, and accepted the benefits afforded by the permit"]; *Ojavan Investors, Inc. v. California Coastal Com., supra*, 26 Cal.App.4th at p. 528; *Rossco Holdings, Inc. v. State of California, supra*, 212 Cal.App.3d at pp. 654-655.)

We reject the trustee's contention that the causes of action alleged in his complaint attack only the County's action in accepting the irrevocable offer rather than the Coastal Commission's 1980 administrative permit condition. The validity of the permit condition underlies all of the causes of action alleged in the trustee's amended complaint. This is illustrated by the trustee's Notice of Revocation, incorporated by reference into the amended complaint, stating that there is no "rough proportionality between the adverse impact of the improvement and the adverse impact of the Permit Condition"; the "exaction imposed by the Permit Condition is unconstitutional, unlawful, and in violation of public policy"; and there was "no consideration for the Permit Condition." The current claims are derived from and dependent upon the original permit condition the predecessor in interest failed to timely challenge. To allow the instant challenge to the permit condition would circumvent the system of review provided under Code of Civil Procedure section 1094.5, undermine the authority of the administrative hearing process, waste administrative and judicial resources, and render the administrative hearings "nothing more than perfunctory gestures." (*Patrick Media Group, Inc., v. California Coastal Com., supra*, 9 Cal.App.4th at p. 613.)

The trustee contends that even if California law does not expressly provide a cause of action for the claims asserted in his complaint, federal law does. He argues that under 42

U.S.C. section 1983, any person may challenge local government actions that violate rights guaranteed under the federal Constitution.[2] The federal claim is barred by the doctrine of res judicata as well. (See, e.g., *Rossco Holdings, Inc. v. State of California, supra*, 212 Cal.App.3d at p. 660 [state procedural rules bar substantive due process claim].)

Finally, we reject the trustee's contention that his claims were not ripe until the County actually accepted the irrevocable offer to dedicate because the property interests in the land underlying the easement were not extinguished until then. *Palazzolo v. Rhode Island* (2001) 533 U.S. ___ [150 L.Ed.2d 592], cited by the trustee for this proposition, is inapposite.

In that case, Palazzolo and several associates owned commercially valuable waterfront property, which Rhode Island designated as coastal wetlands. In 1971, a state agency was created to protect the coastal property and it adopted restrictive land use regulations, designating properties such as Palazzolo's as wetlands and limiting their development. Several years after the promulgation of the restrictive legislation and regulations, Palazzolo became the sole owner of the property. He then filed applications with the state agency for permission to develop most of his wetland property and to fill about two-thirds of the property. The state agency denied the applications and Palazzolo unsuccessfully sought judicial review of the agency's decision. Palazzolo then filed an inverse condemnation suit in state court, claiming the wetland regulations, as applied to his property, violated the Fifth

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[2] 42 U.S.C. section 1983 provides in pertinent part: "Every person who, under color of any statute, ordinance, regulation . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

Amendment Takings Clause. The Rhode Island Supreme Court held that his taking claim was not ripe, he lacked standing to challenge regulations predating his ownership of the property, and his claim that he was deprived of all economically beneficial use of the property was contradicted by the evidence. The United States Supreme Court reversed the first two holdings above, holding that his taking claim was ripe because the state agency had denied multiple applications for development and he had standing to challenge the wetland regulations. The court further held that the postregulation acquisition of title was not fatal to the taking claim. "Were we to accept the State's rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land." (*Palazzolo v. Rhode Island, supra*, 533 U.S. at p. ___ [150 L.Ed.2d at p. 613].)

Palazzolo does not address the situation, such as that presented here, where the predecessor in interest acquiesced in the restriction and accepted the benefits. The County does not contend that the trustee's taking claim is barred because the trust had notice of regulatory laws in effect at the time it acquired the property. Rather, the County contends the taking claim is barred because the trust acquired the property subject to an explicit recorded offer of dedication in which the prior landowner conveyed away the very property interest at stake—the right to exclude the public from the property.

In light of our conclusion above that the doctrines of res judicata and waiver bar the claims asserted in the amended complaint, we need not reach the question whether the trustee had standing to bring the action.

The CEQA Claim (Eighth Cause of Action)

The trustee next contends the trial court erred in dismissing his CEQA claim. We disagree. The cause of action is barred by the statute of limitations set forth in Public Resources Code section 21167, subdivision (d), which requires any person wishing to challenge an agency's decision to do so within 180 days of approval of the project. The Coastal Commission approved the permit condition in 1980, stating that the development project would not have any "significant adverse impact upon the environment." Under CEQA guidelines, the term "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (3) An activity involving the issuance to a person of a . . . permit . . . or other entitlement for use by one or more public agencies." (CEQA Guidelines, § 15378, subd. (a).) "Project" refers "to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (CEQA Guidelines, § 15378, subd.(c).) A project is "approved" when the agency makes a decision that "commits the agency to a definite course of action in regard to a project intended to be carried out by a person." (CEQA Guidelines, § 15352, subd. (a).) For private projects, "approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary . . . permit . . . or other entitlement for use of the project." (CEQA Guidelines, § 15352, subd. (b).)

As the County observes, the public access easement in this case was specified as a condition to issuance of the 1980 permit, the Coastal Commission determined the permit would not issue in the absence of the condition, and the commission found that the project did not have any significant adverse environmental impact. Acceptance of the irrevocable offer to

dedicate was a foreseeable implementation of the original project approved in 1980. The trustee does not allege that the County has taken any steps to expand the scope of the intensity of the easement. The instant action should have been filed, thus, within 180 days of issuance of the permit. In light of this conclusion, we need not determine whether the CEQA claim was subject to dismissal for noncompliance with the hearing and service requirements of Public Resources Code sections 21167.4, subdivision (a), and 21167.6.

The judgment is affirmed.[3] Costs are awarded to respondents.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

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[3] In a supplemental opening brief, the trustee argues for the first time on appeal that the Coastal Commission, because of its appointive structure, is an improperly constituted executive agency and that its issuance of the conditional permit in this case violated the doctrine of separation of powers. The trustee suggests, therefore, that the County cannot rely in accepting the irrevocable offer to dedicate upon the commission's action. We decline to reach the issue raised for the first time on appeal. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 570.)

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
(ANACAPA DIVISION)

[Filed Dec. 13, 2000]

Case No. 01003407

JOSEPH L. COLE, TRUSTEE OF THE
STANFORD FARMS TRUST,
Plaintiff-Petitioner,

vs.

BOARD OF SUPERVISORS OF THE COUNTY OF
SANTA BARBARA; COUNTY OF SANTA BARBARA;
and DOES 1 through 50 inclusive,
Defendants-Respondents.

[~~PROPOSED~~] ORDER ON COUNTY'S DEMURRER AND
MOTION TO DISMISS COMPLAINT AND PETITION

Date: November 21, 2000
Time: 9:00 a.m.
Dept: 3

Assigned For All Purposes to the
Honorable Thomas P. Anderle

On November 21, 2000, the Court conducted a hearing on the demurrer of the County of Santa Barbara ("County"), in which the Board of Supervisors of the County of Santa Barbara is deemed to have joined, to the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth causes of action, and motion to dismiss the California Environmental Quality Act ("CEQA") cause of action (eighth), of the First Amended Complaint and Petition for Writ of Mandamus ("Complaint").

Plaintiff/Petitioner Joseph L. Cole, as Trustee of the Stanford Farms Trust ("Plaintiff") was represented by K. Andrew Kent and Mark Haddad; Respondent County was represented by Deputy County Counsel William M. Dillon. Also appearing for County was Kelly A. Casillas. The Court, having read and considered all matters previously submitted, as well as argument of counsel, finds and IT IS HEREBY ORDERED as follows:

1. The demurrer of County as to all causes of action of Plaintiff's Complaint is sustained without leave to amend on the grounds that: (a) the claims are barred by res judicata because a person may not challenge the validity of the conditions of a permit without having filed a timely petition for writ of administrative mandamus to contest the permit conditions now being challenged; (b) the claims are barred by waiver because a party may not challenge the validity of the conditions of a permit where its predecessor-in-interest accepted the benefits of the permit and complied with the challenged permit conditions; and (c) Plaintiff has no standing to challenge the offer to dedicate because, when his predecessor recorded the irrevocable offer to dedicate, she conveyed the property interest that Plaintiff now claims to own.

2. The eighth cause of action is also subject to demurrer because the claim is barred by the statute of limitations of Public Resources Code section 21167 (Code of Civ. Pro. § 430.10(e)).

3. The motion to dismiss of County is granted as to Plaintiff's eighth cause of action on the grounds that: (a) Plaintiff failed to comply with Public Resources Code 21167.4(a) that requires Plaintiff to request a hearing on the writ within 90 days of filing the action; and (b) Plaintiff failed to serve County with Notice of Commence-

ment of Action and Notice to Prepare the Administrative Record required by Public Resources Code section 211.67.6(a).

Dated: December 12, 2000.

/s/ Thomas P. Anderle
THOMAS P. ANDERLE
Judge of the Superior Court
County of Santa Barbara

APPENDIX C

IN THE SUPREME COURT OF CALIFORNIA
En Banc

[Filed Mar. 13, 2002]

JOSEPH L. COLE, as Trustee, etc.,
Plaintiff and Appellant,

v.

COUNTY OF SANTA BARBARA,
Defendant and Respondent.

Court of Appeal, Second Appellant District,
Division Six—No. B147339
S103930

Petition for review DENIED.

The request for an order directing publication of the opinion is denied.

/s/ GEORGE
Chief Justice